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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER				
MESFIN, YEMANE				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/743,430

**Applicant(s)**

DOUGLIS ET AL.

**Examiner**

Yemane Mesfin

**Art Unit**

2144

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 July 2008.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-22 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 23 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-8508)  
4) ☐ Interview Summary (PTO-413)  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_  
Paper No(s)/Mail Date \_\_\_\_\_

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 06/20/2008 has been entered. Claims 1-22 are pending in this application.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sundaram et al., (U.S. Patent Number 7,136,922) hereinafter referred to as Sundaram in view of Chase et al., (US Patent Number 7,099,936) hereinafter referred to as Chase.

As per claim 1, Sundaram disclosed a system for delivering an integrated web hosting and content distribution affording a predetermined service performance level to an individual client [Abstract and Column 1, Line 62 through Column 2, Line 45], comprising: a first web hosting server for a web site [Fig. 2, # 200, Origin Server]; at least one content distribution network [Fig. 2,

# 202 CDN (Content Distribution Network)]; a redirection means for receiving DNS requests from access devices through a local DNS [Column 2, Lines 17, Column 4, Lines 22-26 AND Column 5, Lines 24-26, redirecting DNS request via a local DNS]; and monitoring means for monitoring operational performance parameters of the first web hosting server and the at least one content distribution network, wherein the redirection means and the monitoring means are under operational control of a primary service provider, of the individual client [Column 2, Lines 14-27, monitoring operations of the origin server and servers of the CDNs, and Column 4, Lines 3-6, Column 5, Lines 15-24 AND Column 6, Lines 18-21, monitoring operational status by ISP of the host]; wherein, based on signals from the monitoring means, the redirection means of the primary service provider returns a record to the local DNS indicating whether or not the first web hosting server is capable of meeting the predetermined service performance level[Column 5, Lines 15-38, Column 6, Lines 15-20], and the redirection means sending the local DNS a record including an IP address of the first web hosting server when a performance value is below a predetermined operational performance threshold [Column 4, Line 49 through Column 5, Lines 45-47, Column 6, Lines 27-38 & Lines 53-59, when a predetermined performance condition is not triggered, a request is serviced by the origin server as usual], and the redirection means sending the local DNS a different record causing the local DNS to make a subsequent DNS request to a DNS of the at least one content distribution network when the performance value is equal to or above the predetermined operational performance threshold [Column 4, Lines 49 through Column 5, Line 10, Column 5, Lines 24-43, Lines 47-61 and Column 6, Lines 27-38, when a predetermined performance condition is triggered at the origin server, a DNS request is redirected to a DNS associated with a CDN where content is served from a CDN dynamically when the origin server is not capable of fulfilling the request].

Sundaram substantially disclosed the invention as claimed. However, Sundaram does not explicitly recite monitoring operational performance parameters in accordance with request of individual client and predetermined performance (i.e., QoS) threshold.

However, as evidenced by the teachings of Chase, monitoring operational performance parameters in accordance with request of individual client and predetermined performance (i.e., QoS) threshold based on SLA (service level agreement) of individual clients to maintain a minimum QoS was known in the art at the time the invention was made (see Chase, Abstract, Fig. Fig. 2, Column 2, Lines 15-59, and Column 3, Lines 37-62). Thus, it is respectfully submitted that it would have been obvious to one of ordinary skill in the art at the time the invention was made to take the teachings of Chase related to monitoring performance of a computing resource in accordance with individual clients and have modified the teachings of Sundaram so that “the content host can meet QoS terms included in the SLA between the content host and the content consumer” (see Chase Column 2, Lines 56-58).

As per claim 2, Sundaram further disclosed the first web hosting server and one of the at least one content distribution networks are operated under the control of the primary service provider [Sundaram Column 3, Lines 25-51 and Column 4, Lines 52-53].

As per claim 3, wherein the first web hosting server and the at least one content distribution networks are monitored by, but not operated by, the primary service provide [Sundaram Column 3, Lines 31-65 and Column 4, Lines 3-26].

As per claim 4, Sundaram further disclosed that the redirection means includes a redirection DNS [Sundaram Column 4, Lines 22-26].

As per claim 5, wherein the redirection means provides application level redirection [Note: DNS by design operates on the application level of standard logical communication layers, thus redirecting is inherently happening at the application level].

As per claim 6, Sundaram further disclosed, monitoring means of the primary service provider receives detailed capacity and health statistics of any of the at least one CDN under the operational control of the primary service provider, and receives aggregate capacity and health statistics from others of the at least one CDN not under the operational control of the primary service provider [Sundaram, Column 2, Lines 14-27, Column 3, Lines 3-6 & 40-51, monitoring operations of the origin server and servers of the CDNs, and Column 5, Lines 15-24 AND Column 6, Lines 18-21, monitoring operational status of the host origin server and CDNs].

As per claim 7, the already combined teachings disclosed that the operational performance threshold is response time [Sundaram Column 5, Line 6, latency (as the predefined performance metrics) of the origin server, see also Chase, Column 3, Lines 5-8].

As per claim 8, Sundaram further disclosed an integrated provisioning system [Sundaram, Column 6, Lines 6-21].

As per claim 9, the already combined teachings further disclosed a customer management interface [Chase, Column 2, Lines 18-44 and Column 3, Lines 27-51, SLA based consumer management system].

As per claim 10, the already combined teachings further disclosed an integrated customer billing and reporting system [see chase, Column 3, Line 37 through Column 4, Line 3, differentiated services to consumers based on SLA of individualized QoS requirements, which entail cost and such cost implicitly incorporates billing and service report].

As per claim 11, Sundaram disclosed a method for delivering an integrated web hosting and content distribution service which affords a predetermined service performance level to an individual client [Abstract and Column 1, Line 62 through Column 2, Line 45], comprising the steps of: providing a first web hosting server for a web site [Fig. 2, # 200, Origin Server];, at least one content distribution network [Fig. 2, # 202 CDN (Content Distribution Network)], redirection means [Column 2, Lines 17, Column 4, Lines 22-26 AND Column 5, Lines 24-26, redirecting DNS request via a local DNS], and monitoring means, wherein at least the redirection means and the monitoring means, are under operational control of a primary service provider, of the individual client [Column 2, Lines 14-27, monitoring operations of the origin server and servers of the CDNs, and Column 4, Lines 3-6, Column 5, Lines 15-24 AND Column 6, Lines 18-21, monitoring operational status by ISP of the host]; receiving a DNS requests from access devices through a local DNS Column 2, Lines 17, Column 4, Lines 22-26 AND Column 5, Lines 24-26], monitoring operational performance parameters of a first web host and at least one content distribution network, wherein, based on signals from the monitoring means [Column 2, Lines 14-27, monitoring operations of the origin server and servers of the CDNs, and Column 4, Lines 3-6, Column 5, Lines 15-24 AND Column 6, Lines 18-21], the redirection means of the primary service provider returning a record to the local DNS indicating whether or not the first web hosting server is capable of meeting said predetermined service performance level, the record including an IP address of the first web hosting server when a performance value is below a predetermined operational performance threshold [Column 4, Line 49 through Column 5, Lines 45-47, Column 6, Lines 27-38 & Lines 53-59, when a predetermined performance condition is not triggered, a request is serviced by the origin server as usual], and the redirection means sending the local DNS a different record causing the local DNS to make a subsequent DNS request to a DNS of the at least one content

distribution network when the performance value is equal to or above the predetermined operational performance threshold [Column 4, Lines 49 through Column 5, Line 10, Column 5, Lines 24-43, Lines 47-61 and Column 6, Lines 27-38, when a predetermined performance condition is triggered at the origin server, a DNS request is redirected to a DNS associated with a CDN where content is served from a CDN dynamically when the origin server is not capable of fulfilling the request].

Sundaram substantially disclosed the invention as claimed. However, Sundaram does not explicitly recite monitoring operational performance parameters in accordance with request of individual client and predetermined performance (i.e., QoS) threshold.

However, as evidenced by the teachings of Chase, monitoring operational performance parameters in accordance with request of individual client and predetermined performance (i.e., QoS) threshold based on SLA (service level agreement) of individual clients to maintain a minimum QoS was known in the art at the time the invention was made (see Chase, Abstract, Fig. Fig. 2, Column 2, Lines 15-59, and Column 3, Lines 37-62). Thus, it is respectfully submitted that it would have been obvious to one of ordinary skill in the art at the time the invention was made to take the teachings of Chase related to monitoring performance of a computing resource in accordance with individual clients and have modified the teachings of Sundaram so that “the content host can meet QoS terms included in the SLA between the content host and the content consumer” (see Chase Column 2, Lines 56-58).

As per claim 12, Sundaram disclosed operating the first web hosting server and one of the at least one content distribution networks under the control of the primary service provider [Sundaram Column 3, Lines 25-51 and Column 4, Lines 52-53].



As per claim 13, further comprising the step of: monitoring the first web hosting server and one of the at least one content distribution network by the primary service provider, but not operating the first web hosting server and any of the at least one content distribution networks under the control of the primary service provider [Sundaram Column 3, Lines 31-65 and Column 4, Lines 3-26].

As per claim 14, Sundaram disclosed that the redirection means includes a redirection DNS [Sundaram, Column 4, Lines 22-26].

As per claim 15, wherein the redirection means provides application level redirection [Note: DNS by design operates on the application level of standard logical communication layers, thus redirecting is inherently happening at the application level].

As per claim 16, Sundaram disclosed receiving detailed capacity and health statistics of any of the at least one CDN under the operational control of the primary service provider, and receiving only aggregate capacity and health statistics from others of the at least one CDN not under the operational control of the primary service provider [Sundaram, Column 2, Lines 14-27, Column 3, Lines 3-6 & 40-51, monitoring operations of the origin server and servers of the CDNs, and Column 5, Lines 15-24 AND Column 6, Lines 18-21, monitoring operational status of the host origin server and CDNs].

As per claim 17, the already combined teachings disclosed that the operational performance threshold is available bandwidth [see Sundaram Column 5, Lines 1-10 and Chase, Column 3, Lines 5-9].

As per claim 18, Sundaram further disclosed an integrated provisioning system [Sundaram, Column 6, Lines 6-21].

As per claim 19, the already combined teachings further disclosed a customer management interface [Chase, Column 2, Lines 18-44 and Column 3, Lines 27-51, SLA based consumer management system].

As per claim 20, further comprising the step of providing integrated customer billing and reporting [chase, Column 3, Line 37 through Column 4, Line 3, differentiated services to consumers based on SLA of individualized QoS requirements, which entail cost and such cost implicitly incorporates billing and service report].

As per claim 21, the already combined teachings further disclosed that the predetermined service performance level is agreed to between the primary service provider and the individual client [see Chase, Column 2, Lines 52-59].

As per claim 22, already combined teachings further disclosed that the predetermined service performance level is agreed to between the primary service provider and the individual client [see Chase, Column 2, Lines 52-59].

### ***Response to Arguments***

4. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection, which better address the claimed invention as amended.

### ***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yemane Mesfin whose telephone number is (571)272-3927. The examiner can normally be reached on 9:00AM-6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vaughn William can be reached on 572-272-3922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Yemane Mesfin/  
Examiner, Art Unit 2144